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ABSTRACT

This British circular from the Department of Education and Science and the Department of Health reviews how the provisions of the 1981 Education Act, which addresses the making of assessments and statements of special educational needs, have been working and offers additional explanation and advice. The information is organized into the following nine categories: (1) duty of local education authorities (LEAs); (2) assessment under the 1981 Act; (3) statutory procedures under the 1981 Act; (4) ages of children to whom these procedures apply; (5) children with statements of special educational needs at grant-maintained schools, independent schools, non-maintained special schools, and city technology colleges; (6) children in care; (7) language of instruction; (8) service children; and (9) cooperation among education, social services, and health authorities. Also provided are a summary of 10 regulations accompanying the 1981 Act and a summary of what LEAs need to tell parents of children with special educational needs. (DB)

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FACTSHEET

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Circular 22/89

A CSIE Summary

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Assessments and Statements of Special Educational Needs: Procedures within the Education, Health and Social Services.

Circular 22/89 from the Department of Education and Science and the Department of Health reviews how the provisions of the **1981 Education Act** which deal with the making of assessments and statements of special educational needs have been working and offers additional explanation and advice. It replaces the earlier DES Circular 1/83, Health Circular HC(83) (3) and Local Authority Circular LAC(83)2; DES Circular 8/81 remains in force.

1. Introduction: Duty of Local Education Authorities (LEAs)

Developments since 1981

The Select Committee report. In may 1987, the House of Commons Select Committee on Education, Science and the Arts published a review of how the 1981 Act was working based on evidence from a wide range of organisations and individuals, including parents, children and their representatives. Its report *Special education needs: implementation of the Education Act 1981* concluded that some aspects of the current procedures for assessing children and making statements were not working properly and that the DES should look at how to improve these procedures. This new Circular is, in part, a response to that report.

The National Curriculum. The Education Reform Act 1988 introduced the new National Curriculum and arrangements for assessing and testing all children at agreed stages through their school life. All pupils, including those with special educational needs, are expected to follow the National Curriculum as far as possible. The National Curriculum sets down a broad spread of levels of attainment which enable pupils of very different abilities to demonstrate progress, and its framework offers wide scope for teachers to cater for the full range of pupils' needs.

However, the 1988 Act also allows for these arrangements to be modified or waived to suit the requirements of pupils with special educational needs.

1 Under sections 4 and 17, the Secretary of State for Education and Science can make appropriate changes to attainment targets, programmes of study, assessment arrangements, or foundation subject requirements to allow for pupils' special needs – for example,for their physical disabilities in relation to certain physical or practical work, whether or not a pupil has a statement.

2 Under section 18, a statement of special educational needs can be agreed for an individual pupil to modify or waive aspects of the National Curriculum. This ensures that any such changes are made only after a full assessmemt of that pupil's needs and in the light of all available evidence, including parental views.

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3 Under section 19 (see also DES Circular 15/89), a headteacher can modify or waive parts of the National Curriculum for an individual pupil on a temporary basis and for a period of no longer than six months in the first instance.

Local Management of Schools (LMS). The 1988 Act requires LEAs to devolve more financial decision-making to individual schools under schemes approved by the Secretary of State. Schemes must be consistent with LEAs' and school governing bodies' statutory reponsibilities, including those of the 1981 Act.

LEAs can decide whether to delegate provision for pupils with statements of special educational needs in ordinary schools and in special units within ordinary schools. If they do, any formula for allocating resources to schools must take account of the particular needs of such pupils. LEAs must continue to ensure that pupils receive the provision specified in their statements and this must be reflected in the conditions of LMS schemes. Schools can decide how best to deploy their overall resources but must offer what is specified in any statement.

LEAs must continue to identify, assess and determine the provision required for individual pupils with statements (including annual reviews and reassessments), allocate extra resources without delay as additional children are so identified, and ensure appropriate provision is made and maintained.

Children with special educational needs, but without statements

The 1978 Warnock Report estimated that nationally as many as 20 per cent of children had special educational needs for which they might need additional provision at some time in their school career. Since the 1981 Act, attention has tended to focus more on the two per cent of pupils with statements rather than on the larger group without statements for whom LEAs and governing bodies also have duties under the Act.

LEAs and governors should satisfy parents with children without statements that appropriate provision is available in school to meet their needs too. Schools should publish information for parents indicating their special support for these children and how the National Curriculum applies to them.

LEAs should expect health authorities to provide services for children with medical problems and those needing professional nursing or paramedical help in ordinary schools, and give advice on children requiring prescribed drugs, other medication or care.

Focus on the child

The best approach to children who may need special educational provision is to focus on their needs rather than on disabilities. Their feelings and perceptions should be taken into account, and older children and young people should share in discussions on their needs and any proposed provision. How far a child's development is hindered by a learning difficulty depends not only on its nature and severity but also on the child's personal resources and attributes, help and support at home, and provision made by school, LEA and other statutory and voluntary agencies. In other words, a child's special educational needs are related both to abilities and disabilities, and to how they interact with his or her environment.

Monitoring and assessment under the 1981 Act

Assessing special educational needs is not an end in itself but a first step to understanding and providing for such needs and to monitoring a child's progress. In an assessment, the LEA should:

1 — assess the child's own resources and deficiencies for meeting the educational demands that will be made on him/her;
2 — Analyse a child's consequent learning difficulties;
3 — Specify goals for change in the child and his/her surroundings;
4 — specify the child's requirements for gaining access to the National Curriculum;
5 — find out the perceptions and wishes of parent and child;

Duties under the 1981 Act: Assessments and statements of special educational needs

The 1981 Act concerns the law on providing education for children with special educational needs (SEN) and gives specific duties to local education authorities (LEAs), district health authorities (DHAs) and school governing bodies. It requires parents to be involved in assessment procedures and allows involvement by voluntary bodies. It requires LEAs to assess those children with SEN who may need the LEA to decide on appropriate provision (section) 5(1)); arrange the provision specified in a statement, unless the parent has made suitable arrangments (section 7(2)); and keep arrangements for provision under review (section 2(4)).

Definitions under the 1981 Act

- Children have **special educational needs** if they have a learning difficulty which calls for special educational provision to be made for them.
- **Learning difficulty** relates to children who have a significantly greater difficulty in learning than the majority of children of their age; and/or have a disability which prevents or hinders them from making good use of the educational facilities generally provided in schools for children of their age; or who are under the age of five and likely to fall within the terms above once over five, if special provision were not made for them.
- **Special educational provision** is provision additional to or different from what is generally made for children of the same age in LEA schools. For children under two, it covers educational provision of any kind. Gifted children without special educational needs are excluded from the Act's provisions. For a child whose mother tongue is not English, his or her lack of competence in English should not be equated with learning difficulties under the Act.
- **Medical advice** is taken in its widest sense and includes information from all the doctors who assess a child's special educational needs, plus advice from non-medical specialists such as speech therapists, physiotherapists, occupational therapists, school nurses, and health visitors.

6 — determine the special educational provision and services for meeting identified needs.

Monitoring and assessing how a child progresses is a continuous process starting around birth in the home with the health and social services. This forms a useful background for understanding a child's educational needs as s/he moves into school.

At school age it will be mainly for the school or a suitably qualified teacher under LEA guidance to decide how a child's needs should be assessed and met. Where the school cannot meet those needs, it should refer the child for assessment and possible statement (see sections 5 & 7, 1981 Act and Education (Special Educational Needs) Regulations 1983 (SI 1983/29).

Statutory assessment procedures may result from a range of sources such as school-based assessment or LEA psychological service recommendation. Parents can ask for an assessment (section 9(1), 1981 Act) and LEAs must comply with such requests unless considered unreasonable by the LEA.

Not every child who is assessed will need a statement to determine provision, except children of parents in the armed forces where frequent moves between authorities can cause delay and inadequate provision if no statement is available.

Parents and parent advocates

Sections 5, 7 and 8 of the 1981 Act set out how parents can be involved in their child's assessment. LEAs should encourage parental cooperation and involvement by providing written information about their rights and duties plus written guidelines on how to contribute to an assessment, on the LEA's duties, plus details of the special educational provision available. However, parents might find premature reference to the 1981 Act enforcement powers threatening and coercive.

Published information should use straightforward, plain language and include names, addresses and telephone numbers of those staff with whom parents can discuss matters during the assessment process. *(See back page for what LEAs must tell parents).* Guidance leaflets should be produced in a language other than English for minority groups, and special arrangements may be needed for parents with hearing, sight, reading and other difficulties, and for translation.

Integration

Under the 1981 Act, LEAs have a duty to ensure children with statements are educated in ordinary schools (subject to conditions set out in section 2(3)), and to consider on its merits a parental request for an ordinary school place. Section 2(7) of the Act requires that a child with a statement shares in the school's activities along with all other pupils.

Many parents whose children have statements want them to be accepted by and to remain in ordinary schools and to have the best quality and balance of educational, social, health and other provision. They need objective information about the most suitable provision available. Because of different situations and perceptions, LEAs have different patterns of provision, but valuable developments include trained special needs support services, resourced provision in ordinary schools, and extensive links between special and ordinary schools.

The 1988 Act aims to raise *all* pupils' expectations and for them to benefit to the best of their ability. In LMS schemes, LEAs can target resources on pupils with statements in ordinary schools by doing so directly themselves or by specifically delegating resources to the school. Whatever an LEA decides, appropriateness and quality of provision are vital.

Sally and Richard Greenhill

Focus on needs rather than disabilities. Bishopswood School, Oxfordshire.

2. Assessment Under The 1981 Act

Children with special educational needs stand the best chance of receiving the quality of education they require if their needs are identified and successfully met in the first years at school. This calls for cooperation and understanding between parents and all the statutory services.

LEAs should make sure a child's education is not disrupted during the process of assessment and statementing, and from the start help families establish and maintain effective relationships with various support services, such as through a named person or key worker.

LEAs should help school governors, including those for grant-maintained schools, fulfil their duties towards children with special educational needs by giving guidance on the arrangements and procedures for identifying, assessing and meeting those needs, including contact points for the specialist services to publicise referral routes.

Where policies are being developed to raise teachers' awareness of the children's needs, schools should designate a teacher to help colleagues provide for the children. The classroom teacher is in the key position to observe children's responses, recognise difficulties, and try out different approaches to meeting needs. Teachers should keep full records of their pupils' progress, including details of professional consultations and assessments under the 1981 Act, and be encouraged to take up opportunities for in-service training.

LEA assessment arrangements must take account of local circumstances, and allow for the progressive extension of professional involvement from the class teacher through to specialist health and education professionals. Parents should be kept fully informed at every stage. Their involvement is vital since information from parents may be crucial to the assessment.

Schools should have clearly identified channels of communication to specialist support and advice, with close contact between teachers, the school health service and social services departments (SSDs), so as to provide help before the situation becomes critical. Teachers and other professionals should work closely together, bearing in mind that a child's needs are likely to change and that assessment is not a single event but a continuous process.

The 1988 Act sets out assessment arrangements which are different from those of the 1981 Act. It provides for regular monitoring of pupils' progress, so as to identify those with special needs. However, heads should continue to identify children who may need to be assessed, or have their statement revised, under the 1981 Act arrangements. Heads have powers under the 1988 Act to modify or disapply the National Curriculum for a temporary period up to six months in specified circumstances.

John Rutter

Springfield Junior School, Derbyshire.

3. Statutory Procedures Under The 1981 Act

A child's lack of progress suggests a need to start assessment procedures under the 1981 Act. LEAs will differ on how they meet children's needs. But they should always start formal procedures under section 5 of the 1981 Act where there are *prima facie* grounds to suggest a child's needs require educational provision additional to or different from that generally available in the LEA's schools.

Under section 7(1) of the 1981 Act, LEAs must give a child assessed under section 5 of the Act the protection of a statement of his or her special educational needs if the assessment leads them to conclude that they should 'determine the special educational provision' for that child. They can determine this provision themselves or leave it to others, such as the headteacher and governing body of the school the child attends. Extra resources for that child can be provided centrally by the LEA or delegated to schools via its LMS scheme.

Children in special schools should normally have a statement. However, statements may be not be needed:

- where ordinary schools determine and make provision from their own resources;
- where children at ordinary schools attend for short but regular periods at tuition centres away from school;
- where the need for extra help is part-time and of short duration;
- where a child is placed temporarily and for a short period in a special school or unit.

Assessment under section 5 of the 1981 Act may be required for children with learning difficulties in hospital, other health care provision, or being educated in a special service setting such as a residential care home, if for example a child:

- has a medical or social condition or receiving treatment likely to affect future learning ability
- has been admitted to a children's or adolescent psychiatric ward.

In such cases, hospital authorities should link with the LEA via the district health authority medical officer so the LEA can decide whether a child should be assessed or reassessed.

Initial stages. The serving of a formal notice by the LEA under section 5 of the 1981 Act should never be the parent's first indication that a child has learning difficulties. Before this, there should be a period of initial assessment with contacts made between the child's parent and the teachers or any other professional making the referral for assessment.

Wherever possible, assessments should take place in surroundings familiar to the child, at home or in school. It may be appropriate to assess a child during a supported mainstream placement or, *in exceptional circumstances*, in a special school — if the parents agree. Children should not stay in assessment placements for long periods and such placements should not be used as a long-term solution for disruptive or disturbed children with or without statements.

The LEA must:

- tell parents it intends to assess a child (section 5(3));
- give the name of an LEA officer from whom to obtain more information;
- tell parents in straightforward language of the right to make representations within a minimum period of 29 days;
- encourage them to make representations, pointing out the importance of their contribution.

Parents do not have to make representations, and the LEA may ask them if they intend to, so the assessment can start without delay. But if they do, they may need help. They can talk to the named officer, with the LEA making a written summary and agreeing it with the parents. The LEA can point them towards help from a voluntary organisation, an education welfare officer, or an employee of a statutory body. Such bodies should be involved early on to avoid misunderstandings.

'Parent' as defined by the 1944 Education Act (section 114(1)) includes a guardian and every person with actual custody of the child or young person. It was the aim of the Children Bill to amend the definition and guidance will be issued in due course. In this Circular, 'parent' includes:

- both the child's legal parents;
- any guardian appointed by deed, will or court order;
- anyone with whom the child is living e.g. foster parent, whether or not a custody order is in force in that person's favour;
- the local authority when the child is in its compulsory care under a care order, a committal to care in divorce or other family proceedings or a parental rights resolution;
- the key worker when a child is in a children's home;

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Sonning Common Primary School, Oxfordshire

- the voluntary organisation when the child is in its care through a parental rights resolution.

The local authority is not the 'parent' when a child is in its voluntary care. No major step should be taken in the life of a child who is a ward of court without the prior permission of the court.

Seeking advice

Advice sought by LEAs (regulation 4, 1983) must be written and concern those features of a child's case which are relevant to and which affect his or her special educational needs and how to meet them. All professionals concerned must receive copies of everything submitted by the child's parents. It is up to the professional advisers to consult together and to draw up all relevant information from their own area of responsibility and submit it to the LEA.

LEAs should consult with relevant professionals if they devise structured forms for collecting advice. There should be adequate space for individual comment. LEAs can help parents contribute to assessments by providing checklists or profiles, although this should not restrict parents from giving evidence in other ways if they wish.

Yvonne Legut

Pre-school provision in Hackney.

Professional advisers should adopt a common approach to providing advice (see ***Monitoring and assessment under the 1981 Act*** on page 2, and Annex 1 in the full DES Circular 22/89).

Delay in the assessment and statement process can put a child at a disadvantage. The Secretary of State expects the process from initial notification that assessment might be needed, to draft statement, should not exceed six months. LEAs can propose target dates for those providing advice, who should act promptly.

Educational, medical and psychological advice and parental evidence

All advice should be concise and relevant to the child's educational needs. **Educational advice** should be sought from the headteachers of all the schools the child has attended in the preceeding 18 months. Heads should consult with all relevant teachers, especially those with specific training in the child's learning difficulty. Advice about a child not at school must come from someone experienced in teaching children with special needs and the provision that can meet those needs.

Medical and other health advice, including that on non-medical support services such as therapy and nursing services, should come from the medical officer designated by the DHA, who should co-ordinate information from all the doctors concerned with the child's assessment, indicating name and profession of those consulted. (This will be attached to the statement as appendices D and G.)

Psychological advice must be sought from an educational psychologist employed or engaged by the LEA, who should draw on the advice of other psychologists (eg clinical or occupational) where relevant. LEAs must provide this service for grant-maintained schools as well as other schools.

Parental representations may be submitted direct to the LEA. They can also offer evidence from another person or organisation acting on their behalf. The parental contribution will be based on informal, intimate and detailed knowledge of the child's personal characteristics and needs and is an important complement to the professional advice. It can include the opinions of others known to the child.

Other advice

LEAs should look to other agencies for advice where relevant, such as social services departments; district handicap teams and community mental handicap teams in the case of a child with severe disabilities; the local child, adolescent and family psychiatric services; specialist assessment facilities set up in schools, units and nurseries; teachers specially qualified in sensory impairment; and education welfare officers.

Cooperation

During assessment, the relationship between professional advisers and parents is crucial, and parents should be encouraged to feel they are partners in the process. Parents have the right to be present at examinations for assisting their child — and while parents should be made aware that some kinds of psychological testing might best be done without any observers present, they still have the right to be there. If they refuse to allow their child to be examined, they risk a fine. However, it is better for the LEA to seek parents' cooperation rather than warn them of possible penalties.

Where a case conference is called to discuss and identify a child's needs, parents should be invited to take part too (with a friend or adviser if they wish) so that trust and cooperation are maintained. The subsequent report should identify who gave what advice and who expressed reservations. Parents may need help with this.

Multi-professional work is most

effective when everyone concerned collaborates, provides mutual support, and knows each others' roles and areas of expertise. The advice they give should be relevant and usable in an educational context and available to teachers so they can plan a detailed programme of education for each child.

Although it is the LEA which decides in the end what a child's school placement or provision shall be, parents and individual advisers should discuss the various options — without committing the LEA in any way. The LEA is also responsible for the successful completion of an assessment, resolving any conflicts between professionals, or uncertainty. Where it proves impossible to reconcile differences, the LEA should make the decision, setting out clearly in the draft statement, the reasons for it. The statement must include all the professional and parental evidence verbatim on which the decision was based. All the professional advisers involved should have feed back about the outcome of assessment procedure to help them plan for and provide the necessary services.

Preparation of a statement

LEAs should give careful attention to the wording of both the draft statement which parents must be invited to comment on, and the final statement; the language needs to be clear, concise and jargon-free. It should be understood by parents and by those who have to deliver what is required. Parents may welcome help in understanding the assessment made, what is proposed and its significance for the child's progress. This can come from a range of sources — LEA officials, heads, teachers, educational psychologists, social workers, the Education Welfare Service, parents self-help groups or voluntary organisations.

When they receive the draft statement, parents have 15 days in which to tell the LEA what they think about it and can ask for a meeting with an LEA officer (section 7(3) of the 1981 Act). This meeting (it can be more than one) is so parents can question the LEA's advisers and gain more information about the advice they gave, put their own point of view, and — if they wish — challenge the proposals. They can demand the LEA reconsider any part of the draft statement with those who gave the advice being questioned.

At the end of the consultations, the final statement should be signed and dated by an LEA officer or relevant committee. It should set out precisely the child's current educational attainments and general development so progress can be monitored, reviewed and reassessed against specific goals and objectives.

Form and content of the statement

LEAs should use a common format for writing statements (regulation, 10, 1983) to avoid a statement being misinterpreted when a child transfers between LEAs and to help courts apply case-law interpretations. A statement *can* vary — what is important is that it is accurate and clear to parents and teachers. There should be five sections:

1 **Introduction** identifying the child, the parents, and the Social Services Department if the child is in its care; and referring to the statutory provision under which the statement is made.
2 **Special educational needs** setting out all the child's special educational needs, whether or not the LEA feels able to make provision. This section should provide a summary of the material obtained during assessment (see ***Monitoring and assessment under the 1981 Act),*** state what the child can do as well as what s/he cannot, and detail educational and developmental objectives for the child. It should be clear, unambiguous and not internally contradictory.
3 **Special educational provision** detailing what the LEA will be legally bound to provide, specifying facilities and equipment, staffing arrangements, teaching methods and approaches, and where relevant, educational environment and access, and transport. It should also list any exceptional arrangements for modifying or waiving the National Curriculum — attainment targets, programmes of study, assessment and testing arrangements. Statements that fail to specify in detail the required provision, are of little use to parents and professionals.
4 **Appropriate school or other arrangements** describing the type of school considered most suitable for the child, naming the school if known, or the provision to be made if otherwise than at school. While the LEA will wish to take into account parental preference of school, it is not bound to agree to that preference.
5 **Additional non-educational provision** setting out any non-educational provision, such as speech therapy, which the LEA considers will help the child and which it will provide itself or ensure is provided by the DHA, SSD or some other body.

Placement and further advice

A permanent placement should be arranged as soon as possible. Once the LEA decides to make a statement, it should send a copy to the parent referring to the right of appeal (section 8, 1981 Act) and provide a named person whom the parent can contact for more information and advice about the child's special educational needs. This named person should have the knowledge and experience of the education service to understand the difficulties of such children and be able to get on well with parents.

Marlborough School, Oxfordshire.

Appeals

Disagreements between parents and the LEA should be resolved informally and at local level where possible. Appeals to the Secretary of State should be a last resort. LEAs should refer parents to organisations which can help with appeals and to those services available free of charge.

Members of local appeal committee should have relevant knowledge of the range of provision for special educational needs. Parents have the right to see all documents presented to the committee and to provide further evidence themselves, which must be passed on to the committee by the LEA.

In an appeal to the Secretary of State, both LEA and parents can present their version of the facts and are allowed to comment on all relevant material presented to the Secretary of State.

Reviews

LEAs must review statements at least once a year (para 5, part 2, schedule 1, 1981 Act). A review should check if the provision in the statement is actually meeting the child's needs. It should be based on reports from the school, teachers and other professionals, the parents and, where practicable, the child. Parents should be encouraged to attend the review.

For those children in special schools, the option of a supported mainstream placement should be considered as part of the review.

Parents have the following rights of appeal under the 1981 Act:

situation	appeal to	possible outcome
1 if the LEA decides not to set out special educational provision after an assessment (section 5)	Secretary of State	confirm LEA decision or direct it to reconsider
2 if parent disagrees with special educational provision set out in the statement (section 8)	Local appeal committee	confirm LEA decision or ask it to reconsider
3 if LEA amends provision in an existing statement, including modifications to National Curriculum for child (section 8, plus para 84, schedule 12, 1988 Act)	Local appeal committee	confirm LEA decision or ask it to reconsider

If the parent remains dissatisfied with the outcome after appeals under **2** and **3** above, s/he can appeal further to the Secretary of State.

Re-assessments

A re-assessment should take place when there has been a significant change in a child's circumstances and can occur after an annual review, on the instructions of the headteacher, or on a request from the parent. Children with statements who have not been assessed since before the age of 12½ should be reassessed within a year of being 13½ (regulation 9, 1983). This is to make proper arrangements for the rest of a their school career, prepare them for adult life, and agree what further education, vocational training, or employment is most suitable.

Reviews and reassessment apart, schools should always be sensitive to the changing needs and circumstances of their pupils and LEAs and schools should be prepared to transfer pupils between schools to meet such changes.

In assessing the future needs of young people with disabilities after their fourteenth birthday, LEAs should keep in close contact with social services departments (SSDs), parents and the young people themselves (section 5, Disabled Persons Act 1986). SSDs must carry out a multi-disciplinary assessment of the young person before they leave full-time education.

John Rutter

Springfield Junior School, Derbyshire.

Transfers

When a child with a statement moves from one LEA to another, the statement must go with the child. The new LEA must assess the child's needs and seek the parent's views if it intends to amend the statement it has received from the old LEA. Schools can help parents appreciate the implications of a move for the child's education in the new LEA.

Keeping and disclosure of statements

A statement should not be disclosed without parental consent (regulation 11, 1983) except in the child's educational interests, such as providing information to the child's teachers or other professionals involved with the child, and for certain statutory purposes, such as appeals under section 8 of the 1981 Act. Under specified safeguards (regulation 11c, 1983), an LEA may disclose information for research purposes.

On the disclosure of information about children and young people with disabilities, the 1983 regulations have been amended by Statutory Instrument SI 1988/1067 following the Disabled Persons Act 1986 to allow social service departments access to statements.

4. Ages of Children to Whom These Procedures Apply

The 1981 Act applies to all children from birth to 16, plus all pupils who stay on at school to 19 (section 4(2) and 10, 1981 Act). The National Curriculum applies to children aged 5 to 16.

Children under 5

A health authority, through a designated medical officer, must tell parents if their child has, or is likely to have, special education needs (section 10, 1981 Act) and inform the LEA after discussion with the parents. It must also tell the parents about any voluntary body which can help them. Voluntary bodies should make sure DHAs, SSDs, and LEAs know about their services.

The LEA may assess a child under two with parental agreement — and must do so following a parental request — in whatever form the LEA considers appropriate (section 6, 1981 Act). Any statement made will not be subject to section 8 of the 1981 Act concerning parental appeals. Provision should allow for maximum flexibilitiy in meeting the child's needs and should include support and advice to help parents help their children.

Sections 5 and 7 of the 1981 Act apply when the LEA must provide for the special educational needs of children between two and five. It is crucial to identify such needs early on and such children should be given priority for nursery provision, with the extra help required clearly spelt out in the statement. Early speech and language difficulties are often linked to later learning problems. Careful monitoring at nursery stage can help in later provision and there should be close contact between school health services, parents, teachers and any voluntary organisation involved.

Many parents are helped by pre-school support and home-based learning programmes, such as Portage, which many local authorities now operate. Close cooperation between parent, the providing agencies, and education, health and social services is integral to the success of such programmes.

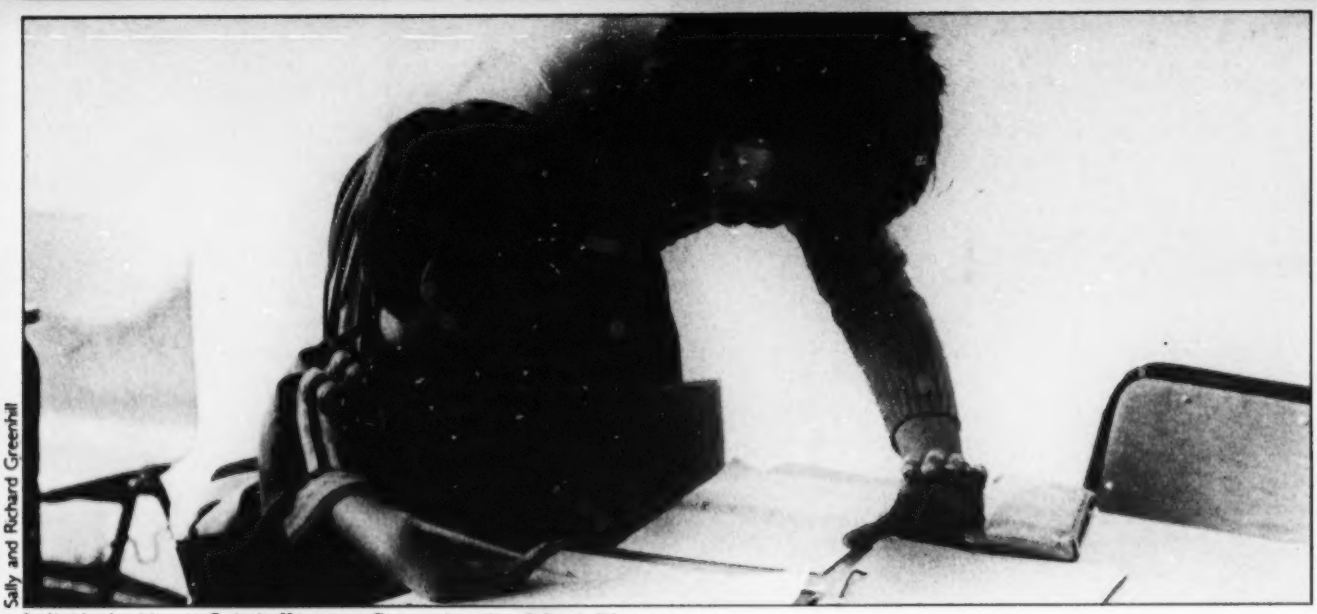
Young people over 16

LEAs must maintain statements for young people over 16 if they stay at school, but not if they are in further education. However, if parent and young person agree, the LEA can pass the statement to the college concerned. The 1988 Act now makes it clear that LEAs must provide full-time education for all who seek it up to the age of 19, including those with special educational needs, and to ensure adequate facilities for further education for those with learning difficulties (section 102(2), 1988 Act). LEAs and SSDs also have duties to those over 16 and still in education, under sections 5 and 6 of the Disabled Persons Act 1986.

5. Children with Statements of Special Educational Needs at Grant-Maintained Schools, Independent Schools, Non-Maintained Special Schools, and City Technology Colleges.

LEAs must ensure that the special educational provision listed in a child's statement is provided (section 7, 1981 Act). If the school named is one of the above, rather than one maintained by the LEA, the governors and headteachers of that school are responsible for the admisssion arrangements.'

Grant-maintained schools should continue the admissions policy in place before their change of status and observe the requirements of the 1981 Act. The LEA must extend its educational psychologist service to such schools and provide direct to school and pupil any extra support specified in the statement, through a grant, staff, equipment, and so on. The LEA must also carry out annual reviews and the 13-plus reassessment of children with statements.



Sally and Richard Greenhill

Individual tuition at Quintin Kynaston Comprehensive School, Westminster.

6. Children in Care

If a child is in care, under a care order or voluntarily, the LEA must carry out its duties to the child under the 1981 Act. The LEA's departments must cooperate in the best interests of the child over provision and placements, and consult each other in advance of any decision. (The Children Bill strengthens such requirements and guidance will be issued later by the relevant government departments).

7. Language of Instruction

It must not be assumed that a child has a learning difficulty because the language at home is different from the language of instruction used by the school. Such problems are linguistic and should not be seen as a learning difficulty under the 1981 Act. It may be difficult for an LEA to decide if a child not yet fluent in the school's language has special educational needs. It should communicate with the child in a language with which s/he is familiar. It should also take into account any cultural differences which may mask a child's true learning potential or the nature and extent of any special needs.

LEAs should also make sure that all letters or notices to the child's parent are in a language with which the parent is familiar — and where needed, bring in an interpreter to translate any documents and be present during meetings with parents.

8. Service Children

When a child of a parent serving in the armed forces is being assessed, the LEA should, with parental consent, notify the Service Children's Education Authority (SCEA) on form SEN 1, and assist the SCEA in finding the right school place if requested.

9. Cooperation Between Education, Social Services and Health Authorities

Health and local authorities should cooperate in carying out their responsibilites to children with special educational needs. Changes in the structure and organisation of the NHS will not affect such duties. The best way of doing this should be decided locally, although health authorities, LEAs and SSDs should all ensure suitably qualified and experienced staff are in place to fulfil their responsibilities and to liaise with each other quickly and effectively.

Written for CSIE by RICK ROGERS.

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The Regulations

A CSIE Summary

Summary of Regulations accompanying the 1981 Education Act; (Reg. 1 and 2 refer to 'Operation and citation'(1), and 'Interpretation' (2) only).

Regulation 3

Notice of decision to make an assessment;
Copies of this notice shall be sent by the local education authority (LEA) to the social services authority and the district health authority.

Regulation 4

Advice generally: The LEA will, for the purpose of making an assessment, seek:

1 educational advice (Reg. 5)
2 medical advice (Reg. 6)
3 psychological advice (Reg. 7) and
4 any other advice which they consider desirable to help arrive at a satisfactory assessment.

All this written advice must relate to features which are likely to be relevant to the child's educational needs; it must show how those features could affect the child's needs; and it must show that provision will be necessary.

Those giving advice (in 1-4 above) will themselves consult with anyone they think relevant as far as the child's needs are concerned; they will also consult with any particular people specified by the LEA. The authority will also give them copies of any representatives made by the parents and of evidence submitted by, or at the request of the parents.

Regulation 5

Educational advice: this will be sought from a qualified teacher who may be the head of a school which the child has attended within the predeeding 18 months or a person who the LEA is satisfied has relevant teaching experience.

If the teacher has not taught the child in that period, then advice should be sought from a teacher who has.

In the case of a deaf/partially hearing child, or blind/partially sighted child, the teacher giving advice must be qualified to teach such children.

Regulation 6

Medical advice: this should be sought from a fully registered medical practitioner.

Regulation 7

Psychological advice: this should be sought from a person regularly employed by the LEA as an educational psychologist or a person engaged by the authority as an educational psychologist for the case in question. (Either may consult with another psychologist if they believe that person has relevant information about the child).

Regulation 8

Matters to be taken into account in making an assessment:

a) any representations made by the parents
b) any evidence submitted by, or at the request of the parents
c) the advice obtained via Regulation 4
d) information given by any district health authority or any social service department.

Regulation 9

Mandatory re-assessment:
a child who has a statement written about his/her special educational needs and who has not been assessed since before 12½, must be re-assessed between 13½-14½.

Regulation 10

Contents and form of statement:
the statement must specify:—

1 The special educational provision (facilities, equipment, staffing arrangements, curriculum); the type of school that would be appropriate, and the name of an appropriate school; or
2 particulars of the alternative — 'otherwise' — provision which they consider would be appropriate;
3 non-educational provision which, if not provided by the LEA, they are satisfied will be provided by a district health authority, social services or other body.
4 non-educational provision which would be of advantage to the child.

The statement shall also set out all the representations, evidence, advice and information gathered under Regulation 8.

Regulation 11

Restriction on disclosure of statements: the statement will not be shown to anyone without the parents' consent except:

a) to anyone who the LEA feels should see it in the educational interests of the child
b) for appeal purposes (see Section 8 of the 1981 Act)
c) for the purposes of educational research (the published research to maintain anonymity of the family)
d) on the order of criminal court proceedings
e) under Part III of the 1974 Local Government Act (investigation of maladministration).

Generally speaking the arrangements for keeping statements and attached evidence etc, shall ensure the protection of privacy for parents and child.

Regulation 12

Children moving from one education authority area to another: when a child moves from one LEA to another, the old authority must transfer the statement. If it was written not more than three years previously, then the new LEA may seek advice from specialists in the old authority.

A new authority is free to propose not to make an assessment under Section 5 of the Act, even though a child has transferred to its area with a statement. They must tell the parents of this decision, who, if they disagree with this, could request an assessment under Section 9 of the Act.

Full text of Annex 4 from DES/DOH Circular 22/89.

What LEAs need to tell parents of children with special educational needs

1. About the 1981 Act procedures.
2. About the 1988 Education Reform Act and its implications for their children.
3. About complaints under the 1944 Act.

1. 1981 Act

a. Definitions and Duties.

Definitions of special educational needs, learning difficulties, special educational provision.
Procedures for children with SEN.
Duties of LEA to make and review provision for pupils with SEN.
Duties of LEA to provide for children under age 2 and under 5.
Duties of LEA to make integrated placements, subject to the caveats in Section 2(3).
Duties of LEA to make full-time provision up to 19 for all students, whether in school or college.
Duties of LEA under the 1981 Act for young people at school to age 19.
Rights of parents to contribute to assessments and inform discussions.
Rights of parents to have confidentiality.

b. Assessment

Rights of parent to request assessment. Need to prepare parents and to explain proposals to assess. The named officer contact.
Parent's right to a minimum period of 29 days within which to comment on the LEA's proposal to assess the child. Translations of procedures and meetings into other languages.
Duty of parents to submit child for assessment, and parent's right to attend such examinations.

c. Statements

Parent's right to see all the advice on the assessment of the child following a draft statement.
Significance of proposed (or draft) statement and final statements.
Parent's right to a maximum of 15 days within which to make representations to the LEA on the draft statement.
Content of the statement.
Parent's right to receive a copy of the statement.
Consultation procedures.
Identification of any named persons or key workers.
Annual reviews.
13+ reassessments and their significance for the Disabled Persons (Services, Consultations and Representation) Act 1986.
Parent's right to make representations where the LEA propose to amend or cease to maintain a statement.
Procedures for a child with a statement moving into a new LEA area.

d. Appeals Procedure

Explain appeals procedure.
Right of parent to appeal where no statement is made.
Right of parent to appeal against the special educational provision in the statement.
Details of appeals committees.
Details of appeals committees' responsibilities.
Right of parent to appeal to the Secretary of State.

2. 1988 Act

National Curriculum

Explanation of: Subjects comprising the national curriculum
- Attainment Targets.
- Programme of Study.
- Testing and Assessment.

Modifications and/or disapplications to the National Curriculum recorded in the statement and alternative provision being made.

3. 1944 Act

Right of parents to complain to the Secretary of State under Sections 68 or 99 against an LEA which is acting or proposing to act unreasonably or in default of its duties under the Education Acts.

4. WHO MIGHT HELP?

a. Statutory Bodies

LEA service, including the educational psychologist, the remedial teams, support teachers, ancillary workers and any other systems used by the authority.
Social Services.
District Health Authority Services.
Medical/nursing teams in schools.
Specialist District teams.
Information Technology Unit for handicapped pupils and students.

b. Voluntary Bodies

National and Local.

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Telephone: 081-452 8642
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